

United States Senate

WASHINGTON, DC 20510

October 18, 2010

BY OVERNIGHT MAIL

The Honorable Matthew S. Petersen, Chairman
The Honorable Cynthia L. Bauerly, Vice Chair
The Honorable Caroline C. Hunter, Commissioner
The Honorable Donald F. McGahn II, Commissioner
The Honorable Steven T. Walther, Commissioner
The Honorable Ellen L. Weintraub, Commissioner
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Chairman Petersen, Vice Chair Bauerly, and Commissioners:

We applaud the Commission's decision to consider new rulemaking regarding independent expenditures and electioneering communications in the wake of the Supreme Court's decision in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010). We write with a simple request: that the Commission use this process to repair and strengthen protections against foreign influence of American elections.

Federal statute prohibits direct and indirect contributions and independent expenditures by foreign nationals, including both foreign individuals and corporations chartered and headquartered abroad. *See* 2 U.S.C. § 441e. Unfortunately, the Commission's regulations and interpretive guidance designed to enforce this law have grown out of date. Most critically, they fail to account for the explosive growth of foreign investment in the American economy, and the increasing portion of U.S.-based firms that are controlled, if not wholly owned, by foreign corporations and governments. In 1977, the year after the enactment of section 441e, U.S. firms in which a foreign individual or entity owned a 10% or greater interest added just \$35 billion to the private sector Gross Domestic Product. In 2007, fully 6% of private sector GDP—or \$628 billion—came from U.S. firms in which a foreign individual or entity owned a *majority* interest.

Thus, while Commission regulations ban foreign nationals from “directly or indirectly” participating in a company's decision-making on election spending, 11 C.F.R. § 110.20(i), the Commission has interpreted this rule to allow for election spending by a U.S.-based company wholly owned by a foreign corporation, and whose Board of Directors was controlled by foreign nationals. *See* Federal Election Commission, Advisory Opinion 2000-17 at 3 (July 28, 2000).

The Commission has also allowed foreign nationals on a Board of Directors to participate in decisions regarding the company's budget for corporate political donations and disbursements. Federal Election Commission, Advisory Opinion 2006-15 at 5-6 (May 19, 2006). In fact, a U.S.-based company wholly-owned by a foreign government, whose leadership is entirely comprised of foreign nationals, would fall *outside* of existing regulatory definitions of a "foreign national"—the group of entities prohibited from influencing our elections.

As Justice Kennedy notes in his opinion, the majority in *Citizens United* did not consider or alter federal laws on foreign influence. 130 S.Ct. at 911. But because *Citizens United* destroyed the long-standing legal distinction between corporations and individuals, the decision exposed the underlying weaknesses of the regulations and Commission guidance intended to bar foreign-controlled subsidiaries from influencing U.S. elections. *Citizens United* in fact made it easier for *both* American companies and foreign-controlled subsidiaries to spend freely in our elections. Cf. 130 S.Ct. at 947-948 (Stevens, J., dissenting) ("[The majority's position] would appear to afford the same protection to multinational corporations controlled by foreigners as to individual Americans...").

This is a problem. And while Congress will need to act, the Commission must immediately do its part to protect our elections from foreign influence by rescinding weak interpretive guidance, strengthening existing regulations, and clarifying their application post-*Citizens United*.

Thank you for your attention to this urgent matter. We look forward to reading your Notice of Proposed Rulemaking.

Sincerely,



Senator Al Franken



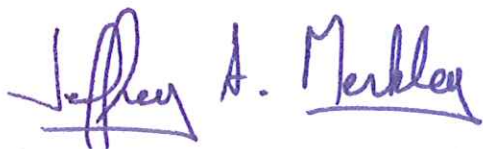
Senator Patrick Leahy



Senator Richard Durbin



Senator Kirsten Gillibrand



Senator Jeff Merkley



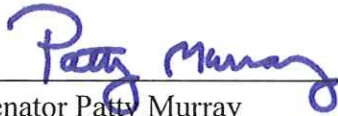
Senator Robert Menendez



Senator Sherrod Brown



Senator Sheldon Whitehouse



Senator Patty Murray



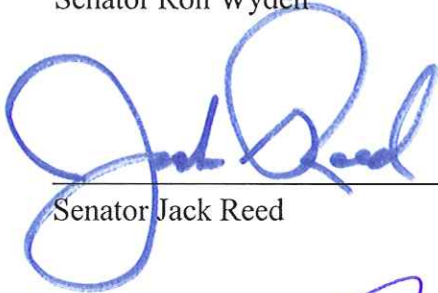
Senator Jeanne Shaheen



Senator Ron Wyden



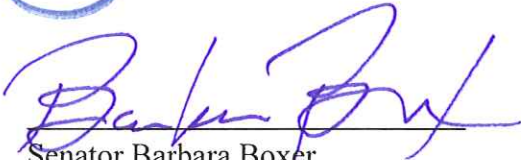
Senator Byron Dorgan



Senator Jack Reed



Senator Frank Lautenberg



Senator Barbara Boxer